

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1965 OF 2006

In

SUIT NO.459 OF 1997

M/s.Punit Computers Pvt. Ltd. : Plaintiffs

V/s.

ATV Projects India Ltd. & Anr. : Defendants

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Mr.Mannadiar i/b. M/s.Mannadiar & Co., for the plaintiffs.

Ms Lakshmi Menon i/b. Law Global for the defendants.

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CORAM : S.A.BOBDE, J.

DATE : FEBRUARY 7, 2007.

P.C.

1. The plaintiffs M/s.Punit Computers Pvt. Ltd., pray for a decree on admission under Order XII Rule 6 of the C.P.C.

2. The suit is for an amount of Rs.1,25,36,016/- as on 31.1.1997 together with further simple interest thereon at the rate of 24% per annum from 31.1.1997 till payment and for a declaration that the equitable mortgage created in favour of the plaintiffs in respect of the mortgaged property is valid and subsisting. The plaintiffs have,

therefore, prayed for a decree jointly and severally against the defendants.

3. The suit is based on a loan advanced by the original plaintiffs, Housing Development Finance Corporation Limited. The loan which was granted under a loan agreement dated 13.5.1992 was secured by way of an equitable mortgage.

4. The original plaintiffs, H.D.F.C. Limited, under a Deed of Assignment dated 1.9.2005 irrevocably, unconditionally and absolutely assigned and transferred in favour of the present plaintiffs, M/s.Punit Computers Pvt. Ltd., all their, rights, title and interest in respect of or in connection with the aforesaid debt including the right to claim, receive and recover the same along with mortgaged properties without any recourse to H.D.F.C. Ltd. Accordingly, the present Notice of Motion has been moved by the present plaintiffs, M/s.Punit Computers Pvt. Ltd. The learned counsel for the plaintiffs has relied on paragraph 19 of the Written Statement dated 14.9.2005 in which the mortgagees have admitted as follows:-

"With reference to paragraph 23 of the plaint, these Defendants state that whilst it is true that the outstanding dues of these

Defendants are duly secured as and by way of an Equitable Mortgage created in their favour by the First Defendants. The said Equitable Mortgage has been created in respect of the immoveable property together with all construction present and future thereon, these Defendants admit that the mortgage is still valid and subsisting and available to the Plaintiff for recovery of their dues. However these Defendants deny that the Plaintiff is entitled to have the said equitable mortgage enforced and/or realized by and under the orders and directions of this Hon'ble Court and/or to apply the net recoveries and/or net realizations thereof in or towards the satisfaction of their dues claimed in the present suit. These Defendants further deny that in the alleged event of the Defendants failing and/or neglecting to pay the Plaintiffs' dues claimed in this suit, the said mortgage be enforced by the sale of the said mortgaged property and the net sale proceeds or net realisations thereof be paid over to the Plaintiffs in or towards the satisfaction of their alleged dues and put the Plaintiffs to

the strict proof of the said contention."

Further, the learned counsel relied on paragraph 4 of the additional Written Statement dated 15.4.2006 in which the defendant has stated that they had offered a sum of Rs.100 lakhs to HDFC Ltd. i.e. the original plaintiffs as full and final settlement of their claim which was, however, rejected. Paragraph 4 of the additional Written Statement reads as follows:-

"The Defendant states that they had offered a sum of Rs.100 lacs to HDFC Ltd. in or about 1999 as full and final settlement of their claim against the HDFC Ltd., however, there has been no positive response from HDFC Ltd. and it is really surprising that after lapse of 7 years HDFC Ltd. settled their claim for Rs.88 lacs with M/s.Punit Computers Pvt. Ltd. It is pertinent to note that taking into consideration the interest/penal interest etc. accrued on the principal sum, the claim of HDFC Ltd. must have increased manifold and therefore the reasons for HDFC Ltd. settling their claim for Rs.88 lacs with M/s.Punit Computers Pvt. Ltd. is reprehensible. Although the Defendants

agreed to make payment of Rs.100 lacs to HDFC Ltd., they backed out without assigning any reason to the Defendant."

5. Moreover, even in the affidavit-in-reply to the Notice of Motion for decree on admission, the defendants in para 3(ix) have stated as follows:-

"With reference to para 11, I say that it is true that it is a matter of record that the defendants had offered a sum of Rs.100 lacs to HDFC Limited in the year 1999 as full and final settlement of the alleged claim to the erstwhile plaintiffs i.e. HDFC Limited. However, it is also a matter of record that their offer of Rs.100 lacs was overlooked and instead they settled their alleged claim with the plaintiffs for Rs.88 lacs that too after lapse of nearly seven years."

Before me, the learned counsel for the defendants clearly stated that there is an admission on the part of the defendants to the extent of Rs.100 lakhs as stated in the Written Statement. The learned counsel further stated that a decree may be passed to that extent.

6. In the circumstances, it is appropriate in the interest of justice to partially decree the suit to the extent of Rs.100 lakhs. A decree is, accordingly, passed to the extent of Rs.100 lakhs against the defendants with further interest at the rate of 6% per annum from the date of the decree till the date of realisation.

7. Decree be drawn up accordingly.

8. Notice of Motion stands disposed of.

S.A. BOBDE, J.